

May 14, 2013

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1 UNITED STATES DISTRICT COURT
2 MIDDLE DISTRICT OF GEORGIA
3 ALBANY DIVISION

4 CASE NO.1:11-CV-58

5 FEDERAL TRADE COMMISSION,

6 Plaintiff,

7 Vs.

8 PHOEBE PUTNEY HEALTH SYSTEM, INC
9 Et al.

10 Defendants.

11 TELEPHONE STATUS CONFERENCE
12 BEFORE THE HONORABLE W. LOUIS SANDS
13 UNITED STATES DISTRICT COURT JUDGE

14

15 DATE: MAY 14, 2013

16 LOCATION: ALBANY, GEORGIA

17 COURT REPORTER: DARLENE PINO

18

19 APPEARANCES:

20 FOR THE FTC: JEFFREY PERRY

21 FOR THE HOSPITAL
22 AUTHORITY of ALBANY
& DOUGHERTY COUNTY: FRANK LOWREY IV
ED WILKIN

23 FOR HCA, Inc: CHARLES PEELER

24

25 FOR PHOEBE NORTH: LEE VAN VOORHIS

R. DARLENE PINO
UNITED STATES COURT REPORTER
(229) 878-0111

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THE COURT: Good afternoon.

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MR. PEELER: Good afternoon, Your Honor.

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MR. VOORHIS: Good afternoon, Your Honor.

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THE COURT: We thank you for your patience, we have some difficulty with our very new and complex technology, ha, ha, but we are here.

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The Court asked you all to be available for a phone conference today in that the mandate I think did come down yesterday from the Court of Appeals from the Eleventh Circuit regarding FTC versus Phoebe, which for the record, is case 1:11-CV-58.

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I know, I think I issued a couple orders indicating The Court didn't believe it had any authority to do anything until that mandate was returned. It has now been returned, and there were some concern I think from the defendant as to whether they would have enough time, the appropriate time under the rules to respond with the time for responding I think probably expiring during the pendency of the mandate being issued by the Court of Appeals.

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So in the meantime, of course, there has been a substantial amount of time, a significant amount of time

1 available. So I was thinking that probably we should be
2 able to get the briefing completed in maybe a shorter time
3 than the normal time from today. So let me hear from the
4 defendants in that regard first.

5 MR. LOWREY: Your Honor, this is Frank Lowrey
6 representing the Hospital Authority. I think most of what
7 I say probably goes for the Phoebe entities as well, if
8 not, Lee Van Voorhis can jump in and speak to that.

9 THE COURT: Yes.

10 Mr. LOWREY: It is true some time has passed.
11 The other thing you need, though, to put that into context
12 is that all these lawyers and all of the business people
13 are engaged in a 200 miles an hour sprint to keep pace
14 with the FTC administrative proceedings; and discovery
15 closes at the end of those proceedings the end of May. We
16 are double tracking depositions to get by. There were two
17 depositions simultaneously in Albany this morning. Next
18 week we have three different depositions in one day in
19 three different cities simultaneous: Cincinnati,
20 Nashville, Thomasville.

21 We understand there are ten depositions not yet
22 scheduled that the FTC wants to take. In other words, we
23 haven't been here sitting with time on our hands to write
24 a brief and we aren't sitting here with time on our hands
25 in May.

1 THE COURT: With your mentioning that, I
2 remember now there was some reference to the fact that you
3 all were engaged in some kind of expedited discovery.

4 MR. LOWREY: Yes, sure, and maybe this is the
5 pace the FTC always proceeds on, but from the standpoint
6 of any federal court litigation, this is incredibly
7 expedited. I think there was a six week discovery. We
8 aren't asking you to do anything about that, but do ask
9 you to take that into account in setting the briefing
10 deadline.

11 I was going to ask you to treat the FTC's motion as
12 ifs it was set on Friday May the 10th, which is the first
13 date it could have properly been filed, and let our times
14 play out under the local rules. If that's not acceptable
15 to The Court, today is the 14th, what if we filed
16 something ten days from now by the 24th?

17 THE COURT: Okay, let me hear from the, uh --
18 any other defendant have a different take on what
19 Mr. Lowrey just said?

20 MR. PEELER: No, Your Honor, this is Charlie
21 Peeler, and I'm representing the HCA and Palmyra and we
22 agree with what Mr. Lowrey says and the position he has
23 taken.

24 Mr. Voorhis: This is Lee van Voorhis on behalf
25 of the Phoebe entities, and we agree as well.

1 THE COURT: Mr. Perry, let's hear your response
2 in light of what they just reminded The Court.

3 MR. PERRY: Thank you very much, Your Honor.
4 This is Jeff Perry on behalf of the plaintiff FTC. As it
5 relates to the preliminary injunction motion, we would not
6 oppose the defendants' proposal that they file their
7 papers ten days from today. I think that's appropriate
8 and reasonable.

9 There's as separate issue before The Court with
10 regard to the temporary relief, the temporary restraining
11 order motion. As to that motion, just as Your Honor did
12 back in April of 2011, I don't see any reason that the
13 Court can't decide on the TRO motion today at this
14 telephonic hearing as it did the day after the complaint
15 was filed back in April of 2011.

16 So I would propose that the appropriate thing is to
17 bifurcate this, to have a ruling respectfully from Your
18 Honor today on the TRO, and then ten days from now as
19 defendants propose, they would file their papers on the
20 preliminary injunction and we would proceed from there.

21 THE COURT: Are you Suggesting that we have, we
22 are capable of now having a TRO hearing on the phone
23 conference?

24 MR. PERRY: Yes, Your Honor, respectfully. Just
25 like we did back on April 19, 2011. As you may recall, we

1 are more than two years past that, but that April 19th
2 date is the date the original complaint and TRO and PI
3 were filed in your Court. There was telephonic status
4 conference held the following day on April 20th and
5 temporary relief. There was a TRO issued after that
6 hearing; I think the order was entered on April 20th or
7 the following day on April 21st. Of course that was
8 limited in duration through the pendency of the PI hearing
9 which back in 2011 that was held less than two months
10 after that initial status conference.

11 So the only thing that has changed is the primary
12 defense of the transaction, the state action issue is no
13 longer on the table.

14 So we would propose the same type of process
15 certainly applies today because, of course, The Court
16 already has a substantial body of evidence in front of it.
17 Both from the papers, the amended papers we filed this
18 time around in 2013, on top of the papers, expert report,
19 fact declarations and oral argument that took place in
20 2011.

21 In light of that, and in light of our concerns about
22 ongoing interim harm, and in light of our concerns about
23 ongoing action that may frustrate the ability of the
24 commission to fashion appropriate relief, if it is
25 necessary after the merit proceeding, we would ask that

1 temporary relief, the TRO be put in place today, Your
2 Honor.

3 THE COURT: Hasn't the -- there's been a
4 suggestion from the defendants that they agreed to a
5 status quo pending a preliminary hearing, pending a
6 hearing on the preliminary injunction.

7 MR. LOWREY: I can speak on that, or if you
8 still want to hear from Mr. Perry on that. I don't mean to
9 interrupt.

10 COURT REPORTER: Who was that speaking.

11 THE COURT: That was Mr. Lowrey.

12 MR. LOWREY: Excuse me, Your Honor, I forget
13 we are talking on the phone.

14 THE COURT: I was asking for a response from
15 Mr. Perry. In light of some of the documentation, and I
16 have not looked at it very recently, but I did initially
17 before The Court realized that mandate had not yet been
18 issued in this Circuit. But my recollection is that the
19 defendants were agreeing there would be a status quo of no
20 further actions taken by them pending The Court's hearing
21 having a full hearing on the preliminary injunction
22 request -- injunctive relief request.

23 MR. PERRY: Thank you, Your Honor. This is Jeff
24 Perry on behalf of FTC. Your recollection is correct to a
25 certain extent. I think, frankly, we have gotten mixed

1 messages or at least my ability to understand the messages
2 is somewhat foggy. On the one hand, there's been some
3 indication or representation to The Court of a willingness
4 by the defendants to forego some level of action to
5 maintain something approximating the status quo.

6 On the other hand, a couple of things concern us.
7 Number one, there seems to be resistance to having a Court
8 Order to that effect, which we believe is vital and it's
9 unclear to me what the opposition would be to having
10 whatever this standstill agreement is embodied in a Court
11 Order.

12 Number two, the CEO of Phoebe Putney, Mr. Wernick,
13 has been at least reported in the press both in February
14 and in April as saying that or indicating that Phoebe is
15 proceeding with plans, that they have until someone tells
16 them they cannot, that those plans include consolidation
17 of services, tweaking of efficiencies, employment
18 management.

19 I'm quoting from two separate articles that were
20 published in the Albany Herald, first on February 19th of
21 this year, the second on April 10th of this year.

22 The other point I would make is there's been papers
23 filed with This Court, the defendants have indicated that
24 if relief sought by the FTC is somehow overly burdensome
25 or aggressive, which of course we disagree with and I

1 would be happy to address, but certainly at a minimum,
2 highlights that we haven't reached a meeting of the minds
3 on what the breadth or scope of the relief would be. So I
4 wanted to flag that for The Court as well because it is
5 not as simple as an agreement not to terminate service
6 lines at the hospital or close the acquired hospital, for
7 example.

8 One of the things at issue now that the Supreme Court
9 has specifically said, this case is not moot and sent it
10 back to This Court.

11 Now that the Eleventh Circuit has noted on the facts
12 alleged, the joint operation of the two hospitals would
13 substantially lessen competition and tend to create, if
14 not create a monopoly. With those issues on the table and
15 the state action defense stripped away and the ongoing
16 merits trial, as Mr. Lowery noted, is set to start on
17 August 5th. We have obviously an increased liklihood or
18 possibility that Phoebe may be required to divest of this
19 hospital, Palmyra Hospital, at the end of the proceeding,
20 that's an outcome that has yet to be determined, but has
21 become more likely in light of the stripping away of the
22 state action defense.

23 In light of that, Phoebe's incentives to continue to
24 maintain high levels of quantity and service, to maintain
25 physician privileges, to ensure that the acquired hospital

1 is adequately funded. All those are now put in play and
2 implicated and may need to be addressed in any preliminary
3 relief.

4 Our proposed order, as Your Honor saw, includes
5 provisions to restrain and enjoin defendants from further
6 consolidation, from selling off assets of the acquired
7 hospital, from consolidating service lines, from altering
8 physician privileges, from of course critically raising
9 the prices that would impact local employers and local
10 patients and indigent patients.

11 So there is, I suspect, although it is certainly not
12 a complicated or lengthy order as the defendant suggests,
13 I suspect what we are seeking from The Court in terms of
14 preliminary and temporary relief is to a certain extent
15 beyond what they have indicated some willingness to
16 consent to.

17 THE COURT: All right, Mr. Lowrey.

18 MR. LOWREY: Sure, so Mr. Perry is right that
19 what they want in their nine page order is beyond what we
20 said we would do.

21 What we have said is that, and I think we made these
22 representations as of about April 9th or so when the FTC
23 first filed these papers is, we aren't going to destroy,
24 damage, or sell-off or waste the assets that are in
25 contention or do anything else that fails to preserve

1 them.

2 The problem, though, and the very critical difference
3 that this case today as opposed to April 2011 when you
4 entered the TRO, I believe with the defendants' consent,
5 is that you had two entirely separately-owned and
6 separately-licensed hospitals at that point. Today you
7 have one licensed hospital in Albany, Georgia. There is
8 no Palmyra Development with a separate hospital license.
9 There's one Phoebe with one license governing operations
10 on both campuses. And that is, uh, that makes, among
11 other things, that makes the relief the FTC has asked you
12 to enter, very complex and very concerning.

13 And what we'll show you in our preliminary injunction
14 papers, I anticipate, is that if you signed the order they
15 wanted, you would impose an artificial separation on the
16 operation of one licensed hospital in a way that is not
17 permitted by state and federal regulations.

18 And what I mean by that is, I believe we'll show you
19 one licensed hospital with multiple campuses has to be
20 clinically administratively and financially integrated,
21 particularly if you want to treat Medicare or Medicaid
22 patients, which is about 60 to 70% of the patients we
23 treat.

24 I believe we will be able to show you effectively
25 everything in the FTC's order about something like, Don't

1 knock the building down, don't sell off the assets, et
2 cetera, would be inconsistent with the regulations we have
3 to comply with at the hospital.

4 We would also show you the regulations they seek to
5 impose, are in this context, unacceptably vague. Things
6 like don't diminish the clinical services, don't impair
7 the clinical services. That might be fine if you are
8 operating two stand-alone hospitals. But when you are
9 operating one hospital, and you look at those
10 restricitions, people aren't going to know what that means
11 on a day-to-day basis.

12 This is far too complex for you to enter an order
13 over the telephone, uh, to fill in the ten days, twenty
14 or thirty days, however how long it will take to be set
15 for a hearing. There's no emergency here. This
16 transaction closed on in December 2011 when the Eleventh
17 Circuit lifted the stay.

18 The FTC didn't make any effort in any court to stay
19 any acquisition, or any integration, while it petitioned
20 for cert, after cert was granted, or after the Supreme
21 Court ruled in February, or at any time before April 2013,
22 that there's no emergency that would warrant you taking
23 action that, on which you haven't been fully briefed and
24 fully informed over the telephone.

25 I can certainly answer more questions about that and

1 go into more detail, but we stand by our representation
2 that nothing is going to get destroyed, nothing will be
3 irretrievable or concealed or anything like that. If the
4 idea this is going to be reassembled some day and sold
5 off, we obviously dispute that's what is going to happen
6 or what could happen, but that's not an argument you will
7 need to entertain today.

8 What else can I tell The Court about this?

9 THE COURT: Anybody else? That's fine, thank
10 you.

11 MR. PERRY: This is Jeff Perry. I want to
12 obviously give others a chance to respond or supplement.
13 I want to make one thing clear, I don't want to give The
14 Court the impression our proposed order is designed to
15 pull apart the hospitals or recreate the status quo that
16 was created in 2011.

17 The order is apparent on its face, that the status
18 quo we are seeking to maintain as of now, in other words,
19 to the extent Mr. Lowrey is making the point these
20 hospitals are today integrated and are required to be
21 integrated, we are not proposing altering an integration
22 in any way, but we are proposing that it be maintained in
23 the same way it is now; and that it's current staffing
24 levels, quality levels, and service levels, and prices,
25 critically, which haven't been addressed by Mr. Lowrey,

1 Pre-maintained to where they are today. We aren't looking
2 to recreate some time period in the past where Mr. Lowrey
3 might have sought a stay or some additional relief. What
4 we are looking for is where we are today and asking this
5 Court to maintain that.

6 THE COURT: Was someone about to say something?

7 MR. VOORHIS: I didn't mean to interrupt. This
8 is Lee Van Voorhis on behalf of the Phoebe entities.
9 Please go ahead.

10 THE COURT: Here's what I want to say. The
11 Court briefly looked at the proposed order back when it
12 was initially filed. There's a lot in it, and some things
13 I have an understanding of and some I do not. I don't
14 believe that order is -- can be read as being a simple
15 matter of status quo as to whatever it is now. I don't
16 think it is very clear what it is now. The defendants of
17 course are asking for things that would interfere with the
18 ability to perform their function as an entity under the
19 law as well as under the pending actions.

20 Here's the simple thing that I see here.

21 The purpose of the TRO is to maintain the status quo,
22 whatever it is. There are some things to me that sound
23 rather prospective, I don't know, I am not sure, and I
24 don't want to ill-advisedly and uninformed make such a
25 decision.

1 What The Court is going to do, The Court is going to
2 enter a TRO to this extent, making it a ruling in the
3 case. That there are to be no further steps toward
4 consolidating or merging the facilities and they are to be
5 maintained as far as their functions and relationships as
6 they now exist at this time until The Court can have a
7 hearing on the preliminary injunction where The Court
8 believes it needs to heard further so it has a full
9 understanding as to what is being asked for in the
10 interim, beyond what I have ordered, and what is feasible
11 in light of what some of the points have been made to The
12 Court.

13 So The Court clearly means for the status quo, as it
14 now exists, to remain, rather, pending further order of
15 The Court.

16 I know it may be better and ideally to add more
17 detail, but I don't think I can at this point.

18 There have been representations by the defendant that
19 those matters will be maintained as they are, being
20 unsatisfactory to the plaintiffs because it doesn't have
21 the force of a court order, so The Court is making that
22 the force of the Court by ordering that the status quo be
23 maintained.

24 I assume as a part of that, that all records,
25 appropriate personnel, to be identified so that the Court

1 can determine at a later time whether any actions have
2 been taken that are contrary to The Court's instructions.

3 And the secondary question then is, in light of that,
4 the Court would expect this to be maintained during the
5 period of time pending the full hearing and decision by
6 The Court on the preliminary injunction request.

7 You all are in the middle of preparations for the
8 trial of this matter, which I understand is scheduled for
9 August and things definitely needs to be taken care of
10 early. I'll be in trials in June, but because of my
11 normal schedule, for some days, I'm free in the afternoons
12 and we can go into the evenings. So I am prepared to hear
13 it. But I don't hear this as being a short hearing. Just
14 from what I am picking up between you all's difference of
15 view about it of what matters are really pending before
16 The Court.

17 I thought you had already been in discussions or may
18 have been earlier today as to what date, what amount of
19 time, first, that might be required; and secondly, when
20 you all think you all could be here for such a hearing in
21 light of your schedule otherwise.

22 MR. PERRY: Your Honor, this is Jeff Perry on
23 behalf of FTC. One final question. I take your point and
24 respect and appreciate The Court's Judgment on the TRO.
25 The only thing I would ask for clarification or request

1 from The Court, is if The Court would consider as part of
2 the TRO also ordering that the defendants will not raise
3 pricing or renegotiate health plan contracts during the
4 period the TRO was in force. I wants sure whether The
5 Court would be inclined to include that as part of the TRO
6 order.

7 THE COURT: Let me hear from the other side
8 first, before I speak on that.

9 MR. LOWREY: Your Honor, that's part of the
10 problem. I take it at your word that maintaining the
11 status quo means to continue doing whatever we are doing
12 today.

13 THE COURT: Yes.

14 MR. LOWREY: Even then, I have some grave
15 concerns as a practical matter we'll know what that means
16 in every practical instance. For example, there's one set
17 of reimbursement contracts enforced for all patients
18 treated anywhere at a PPMH facility. There's not a
19 separate set of contracts for one campus or the other, and
20 federal and state laws doesn't allow you to do that. You
21 have to be completely and financially integrated if you
22 want to treat Medicaid patients, for example, and be in
23 compliance with the law.

24 What Mr. Perry is suggesting is that's a change from
25 the status quo not a maintenance of the status quo. That

1 will be an undesirable one for the reasons we will
2 elaborate on in our brief.

3 MR. PERRY: This is Jeff Perry. That was not
4 what I was seeking at all. I apologize if I was unclear.
5 We aren't looking to recreate separate contracts. What I
6 was requesting The Court to consider, that however the
7 contract exists as of today as Mr. Lowrey described them,
8 that they would not be recreated or changed from this
9 point forward, and the price not be increased.

10 We are not asking or seeking the Court's order during
11 the TRO phase to recreate contracts or status quo that
12 existed in the past.

13 MR. VOORHIS: This is Lee Van Voorhis from
14 Phoebe Putney. I think what Mr. Perry is asking is still
15 going to end up being unclear in practice, because there
16 are elements of behavior and negotiation going forward.
17 What does he propose, for example, for new contracts and
18 new deals going forward that may be very beneficial or be
19 necessary for patient coverage.

20 I understand that it is one thing to say contract in
21 place, even if it happens to be expiring in the near term
22 and you can't renegotiate, that's challenged, but at least
23 there is a contract to look at. If there's something that
24 has to be said about new a contract.

25 THE COURT: What about this, then, I would grant

1 the request that there would be no changes or increases in
2 contracts existing, but not attributed to entirely new
3 contracts that may occur during the time this is pending.

4 MR. LOWREY: I apologize, you broke up on my end
5 of the line.

6 THE COURT: What I am saying is the concern
7 seems to be not so much with the existing contracts, but
8 those that might occur, or come into being during the
9 pendency of the TRO. I am saying just to exclude those
10 from the inclusion in the TRO. So that would clarify that
11 issue.

12 MR. PERRY: This is Jeff Perry, that's certainly
13 acceptable to us, Your Honor.

14 MR. LOWREY: Unless the record be unclear, Your
15 Honor, respectfully none of this is anything we can
16 consent or agree to. I just want the record to be clear
17 on that.

18 THE COURT: I think as far as the status quo, I
19 see some concern there that if it could be circumvented by
20 renegotiating at this time while it is pending, that would
21 upset the status quo as The Court sees it, and I think
22 that's a reasonable request for those existing contracts;
23 and The Court would exclude from those that would be
24 entirely new contracts, I guess new patients or new
25 parties.

1 And I understand that's over objection, but The Court
2 thinks that's the best way to get some closure to this
3 step so we can get to the next step.

4 Anybody else have any concern?

5 MR. PERRY: This is Jeff Perry. You raised the
6 next step about the scope and nature and timing of the PI
7 hearing itself. The last time, it was several hours and
8 the last time it involved not only discussion of merits
9 and also a lengthy discussion of the state action issue
10 that no longer exists. I think we would be prepared. We
11 would want equal time and make sure whatever The Court
12 wants to hear from us on, we will be prepared to respond
13 to; to and in addition, of course, to the oral arguments,
14 our proposal would be that the discovery which Mr. Lowrey
15 described as currently as being ongoing, and in the merits
16 proceeding, that that would be available and of course
17 could be incorporated into briefing to Your Honor. That
18 you would have the ability to review expert reports to the
19 extent they exist from the merits proceeding which is in
20 progress, that deposition testimony could be incorporated
21 into briefing and that oral argument be available to Your
22 Honor to be able to answer questions and present and
23 summarize all of that evidence which is, of course, the
24 preconsumation evidence from 2011 and prior, and the
25 additional evidence that's been drawn out through

1 discovery and the merits proceeding.

2 I think between the briefing and reports and fact
3 declarations, that each side would have the opportunity to
4 present to The Court, that with one to two hours per side,
5 that that would be more than sufficient to present the
6 issues.

7 Here in light of the nature of the proceeding which
8 is not to ultimately judge the merits of the transaction
9 but within the context of the FTC Section 13B standard
10 which is to determine the likelihood of success only
11 whether the FTC has raised questions going to the merits
12 that are so serious and so difficult and doubtful as to
13 make them fair ground for thorough investigation, study,
14 deliberation and determination by the FTC in the first
15 instance and ultimately by The Court of Appeals.

16 I only go on about the standard because it sets the
17 context for how much evidence and how much of a hearing
18 this Court needs to have as we are -- as Mr. Lowrey
19 pointed out -- at an aggressive pace preparing for the
20 full merits trial, which will begin in about
21 two-and-one-half months where there will be 210 hours of
22 live testimony, fact witnesses, expert witnesses, and
23 obviously as there is ongoing, I think, voluminous
24 discovery.

25 In light of all of that and with gratitude for

1 indulging my long-windedness, I would propose one hour per
2 side would be more than sufficient to summarize the
3 evidence for each side.

4 THE COURT: Mr. Lowrey.

5 MR. LOWREY: I wanted to make some comment that
6 was along the line of it is hard to believe this is only
7 going to last one or two hours.

8 THE COURT: You remember I have been there
9 before, guys.

10 MR. LOWREY: I mean that in total levity. I
11 think we are looking at more like a full day. I
12 understand you might not be able to do it on a full day.

13 THE COURT: I think it will take a full day.
14 Here is what I am going to suggest. I'll give each side
15 three hours each.

16 MR. VOORHIS: With all due respect, this is Lee
17 Van Voorhis with Phoebe Putney. I would like to second
18 what Frank said and point out that Mr. Perry, albeit's
19 long winded recitation, did forget the second half of the
20 test, which, of course, is balancing of the equities. I
21 think there may well be a *upium(sic)* out of that that has
22 to be done here, and there may be far more to bring before
23 this court than what has been outlined so far. I would
24 respectfully like to suggest that we would have at least
25 the full day, as Mr. Lowrey has suggested.

1 THE COURT: What I am getting at is I am saying
2 three hours for any evidence that needs to be presented
3 and reviewed with The Court, and of course, additional
4 time with the argument.

5 Looking at my calendar, the date that looks good to
6 me, and I think I'll go ahead and set it for **June the**
7 **14th, that's on a Friday. June 14th, 2013.** And we'll
8 start at 8:30 a.m. and we'll go as long as we need to go.
9 But The Court has a suggestion and expects that you all
10 try to comport your evidence, presentation to three hours
11 per side.

12 MR. LOWREY: Did you say 8:30, Your Honor?

13 THE COURT: Yes.

14 MR. LOWREY: Do you we need to confirm off-line
15 about availability?

16 THE COURT: You can but this is part of the
17 issue, we have got two matters going on. And I understand
18 what is going on with the administrative hearing that's
19 being set for August; but This Court is on an even shorter
20 timeline.

21 MR. LOWREY: I think a better answer would be
22 we'll take that date, Your Honor.

23 THE COURT: Because I have got -- and that's
24 during a trial period. I'm hoping to get those things
25 cleared so I can live by that date for you. Anything

1 else?

2 Oh, yes.

3 MR. LOWREY: As Mr. Perry says, this is a
4 developing record that's developing in real-time, so maybe
5 we'll make some further submission to you still
6 comfortably in advance of that June hearing but after May
7 the 4th. Candidly, Your Honor, if it is going to be June
8 14th, can you get more breathing room on that 24th date
9 now that you have put down the TRO?

10 THE COURT: I need some reading room, right.

11 MR. LOWREY: What if we pushed that to the 31st,
12 which would still give you two weeks before the hearing to
13 read?

14 THE COURT: That's reasonable. I'll go along
15 with that. In light of The Court entering a TRO pending
16 the hearing, that's not bad, I can accept that for the
17 21st.

18 MR. LOWREY: Thank you, Your Honor. If we get
19 it done earlier, maybe we can so you can consider that.
20 We'll see.

21 THE COURT: Anything else?

22 MR. PERRY: Your Honor, this is Jeff Perry.
23 Would be it useful, productive for Your Honor to have
24 reply briefs from plaintiff, something brief?

25 THE COURT: Those are always helpful in these

1 matters. Yes, that would be appreciated.

2 MR. PERRY: Should we submit that if the
3 defendants are anticipating filing their opposition on the
4 31st, perhaps by the 7th we would have a reply in.

5 THE COURT: That will be good. That will be
6 fine.

7 All right. I would expect you all to confer further,
8 if you all find, for some reason that you are aware of,
9 there are some matters you are aware of that I am not,
10 that will affect that date or affect the timeline as The
11 Court has adopted, let me know as soon as you can so we
12 can make other adjustments if we have to.

13 MR. LOWREY: As a piece of housekeeping, we
14 moved The Court to submit one 40 page brief instead of two
15 20-pagers.

16 THE COURT: That's fine.

17 MR. LOWREY: It would help for planning
18 purposes.

19 THE COURT: That will be fine, you may do so.
20 That's granted.

21 MR. PERRY: This is Jeff Perry. Just before we
22 hang up, can I have clarity on the 14th? I understand
23 obviously three hours per side. Is The Court envisioning
24 the plaintiffs would go first and we would have some
25 opportunity to reserve part of our three hours of our time

1 for rebuttal?

2 THE COURT: Yes, you can split that up however
3 you wish. That's ideally what The Court is suggesting,
4 that you work towards managing it to be within three
5 hours. Obviously, there may be some things that may not
6 fit that and I understand that.

7 MR. PERRY: Thank you. Understood.

8 THE COURT: I'll be hearing from you on the 31st
9 at 7, and see you on the 14th.

10 MR. LOWREY: We hope it will be nice and cool
11 down there.

12 THE COURT: It is right now, but I don't know
13 that it will be then. Thank you.

14 (Recess)

15 CERTIFICATE OF REPORTER

16

17

18 I hereby certify that the foregoing is a true and correct
19 transcript of the proceedings.

20

21 /s_____

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